

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6052 of 2000

with

SPECIAL CIVIL APPLICATION No 13074 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
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MANIBHAI AND BROTHERS (PCC)

Versus

SARKHRJ OKAF MUNICIPAL BOROUGH

Appearance:

MR RR VAKIL for Petitioner No. 1
MR PARESH UPADHYAY for Respondent No. 1-2
MR MUKESH PATEL, AGP for Respondent No. 3-5

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 03/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

In this group of two petitions, common questions are raised and, therefore, they are being disposed of by this common judgment.

The petitioners have challenged the issuance of municipal tax bills by the respondent Sarkhej-Okaf Municipal Borough issued under section 132(1) of the Gujarat Municipalities Act, 1963, (Act) on the ground that necessary procedure required under the law has not been followed.

The properties of the petitioners were situated within Okaf Revenue Area and the said area had never collected any taxes like house tax, water tax, sanitary cess and electricity tax. Subsequently, that area formed part of Sarkhej Group Gram Panchayat on amalgamation of Okaf Revenue Area with Sarkhej Gram Panchayat. Thereafter, Sarkhej Group Gram Panchayat was reconstituted as Sarkhej-Okaf Nagar Panchayat and it started levying various taxes as per Gujarat Gram and Nagar Panchayat (Taxes and Fees) Rules, 1964. The further contention of the petitioners has been that it started charging taxes and fees without following any rules after conversion into municipal borough from Nagar Panchayat and that the respondent municipal borough has increased the assessment by around thirty per cent.

It is, therefore, the contention of the petitioners that the action of the respondents are without any authority of law and without following the procedure. The petitioners had paid taxes as alleged by them upto the year 1997-98 and the municipal borough has, now, increased the taxes and has not considered the objections and the representations made by the petitioners. Since they have now issued warrant, the petitioners have rushed to this Court, invoking the aids of the provisions of Article 226 of the Constitution of India.

Section 132 in Chapter IX of Gujarat Municipalities Act, 1963, provides for presentation of bill for taxes in the event of any amount which by or under any provisions of the Act is declared to be recoverable in the manner provided in the said Chapter. The impugned bills have been issued in both the petitions by the respondent Municipal borough invoking the aids of the provisions of sub-section (1) of section 132 of the Act. The statutory in built mechanism for questioning or raising the points which have been agitated in this group petitions should be raised by filing appeal as provided in section 138 of

the Act. It has not been done for the reasons not known to this Court. Section 138 of the Act reads as under :

"138. Appeals to Magistrates - (1) Appeals against any claim included in a bill presented under sub-section (1) of section 132 may be made to any Judicial Magistrate or Bench of such Magistrates by whom under the direction of the Sessions Judge such class of cases is to be tried.

(2) No such appeal shall be entertained unless -

(a) the appeal is brought within fifteen days after the presentation of the bill complained of; and

(b) in the case of a tax on buildings or land or both an application in writing stating the grounds on which the claim of the municipality is disputed, has been made to the executive committee within the time fixed in the notice given under section 108 or 109 of the assessment or alteration thereof, according to which the bill is prepared, and

(c) the amount claimed from the appellant has been deposited by him in the municipal office.

(3) The decision of the Magistrate or Bench of Magistrates in any appeal made under sub-section (1) shall, at the instance of either party, be subject to revision by the Court to which appeals against the decision of such Magistrate or Bench ordinarily lie."

After having taken into consideration the facts and circumstances enumerated hereinbefore and the grounds stated in the petitions, we are of the clear opinion that there is effective, statutory alternative remedy available to the petitioners and they have not availed of the same and straightaway have challenged the issuance of the bills under Article 226 of the Constitution of India. We may make it clear that we are conscious of the fact that mere provision of alternative remedy by itself would not be a bar or ban in entertaining a petition under Article 226 of the Constitution of India. However, it has been a settled proposition of law that except in extra-ordinary circumstances, the writ court will be at loath in exercising its writ jurisdiction under Article 226 of the Constitution of India, which is extra-ordinary, plenary, discretionary and prerogative in

terms. It cannot be assumed, at this stage that the points which have been raised before us could not be agitated before the appellate authority. Not only that nothing has been, successfully, spelt out from the record, prima facie, to show that the fundamental right or any mandatory statutory procedure prescribed under the law has been flagrantly violated. It is, also, not the case of the petitioners that the grievances which are voiced in this group of petitions could not be entertained or examined by the appellate authority as provided in section 138 of the Act. We are, therefore, not inclined to entertain this petition only on the ground that suitable alternative effective statutory remedy is available. Only on this ground, without entering into the merits, these petitions are rejected. Rule is discharged without any order as to costs.

(J.N.Bhatt, J.)

(Akshay H. Mehta, J.)

(vjn)